

1-1 By: Van de Putte S.B. No. 1322
 1-2 (In the Senate - Filed March 7, 2013; March 13, 2013, read
 1-3 first time and referred to Committee on State Affairs;
 1-4 April 30, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 30, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-8 | | | | |
| 1-9 | X | | | |
| 1-10 | X | | | |
| 1-11 | X | | | |
| 1-12 | X | | | |
| 1-13 | X | | | |
| 1-14 | X | | | |
| 1-15 | X | | | |
| 1-16 | X | | | |
| 1-17 | | | X | |

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1322 By: Van de Putte

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to the provision of durable medical equipment and home
 1-22 health care services through informal and voluntary networks in the
 1-23 workers' compensation system; providing penalties.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Subsection (f), Section 408.027, Labor Code, is
 1-26 amended to read as follows:

1-27 (f) Except as provided by Section 408.0281 or 408.0284, any
 1-28 payment made by an insurance carrier under this section shall be in
 1-29 accordance with the fee guidelines authorized under this subtitle
 1-30 if the health care service is not provided through a workers'
 1-31 compensation health care network under Chapter 1305, Insurance
 1-32 Code, or at a contracted rate for that health care service if the
 1-33 health care service is provided through a workers' compensation
 1-34 health care network under Chapter 1305, Insurance Code.

1-35 SECTION 2. Subsection (a), Section 408.0282, Labor Code, is
 1-36 amended to read as follows:

1-37 (a) Each informal or voluntary network described by Section
 1-38 408.0281 or 408.0284 shall, not later than the 30th day after the
 1-39 date the network is established, report the following information
 1-40 to the division:

1-41 (1) the name of the informal or voluntary network and
 1-42 federal employer identification number;

1-43 (2) an executive contact for official correspondence
 1-44 for the informal or voluntary network;

1-45 (3) a toll-free telephone number by which a health
 1-46 care provider may contact the informal or voluntary network;

1-47 (4) a list of each insurance carrier with whom the
 1-48 informal or voluntary network contracts, including the carrier's
 1-49 federal employer identification number; and

1-50 (5) a list of, and contact information for, each
 1-51 entity with which the informal or voluntary network has a contract
 1-52 or other business relationship that benefits or is entered into on
 1-53 behalf of an insurance carrier, including an insurance carrier's
 1-54 authorized agent or a subsidiary or other affiliate of the network.

1-55 SECTION 3. Subchapter B, Chapter 408, Labor Code, is
 1-56 amended by adding Section 408.0284 to read as follows:

1-57 Sec. 408.0284. REIMBURSEMENT FOR DURABLE MEDICAL EQUIPMENT
 1-58 AND HOME HEALTH CARE SERVICES; ADMINISTRATIVE VIOLATION. (a) In
 1-59 this section:

1-60 (1) "Durable medical equipment" includes prosthetics

2-1 and orthotic devices and related medical equipment and supplies.

2-2 The term does not include:

2-3 (A) an object or device that is surgically
2-4 implanted, embedded, inserted, or otherwise applied;

2-5 (B) related equipment necessary to operate,
2-6 program, or recharge the object or device described by Paragraph
2-7 (A); or

2-8 (C) an intrathecal pump.

2-9 (2) "Informal network" means a network that:

2-10 (A) is established under a contract between an
2-11 insurance carrier or an insurance carrier's authorized agent and a
2-12 health care provider for the provision of durable medical equipment
2-13 or home health care services; and

2-14 (B) includes a specific fee schedule.

2-15 (3) "Voluntary network" means a voluntary workers'
2-16 compensation health care delivery network established under former
2-17 Section 408.0223, as that section existed before repeal by Chapter
2-18 265 (House Bill No. 7), Acts of the 79th Legislature, Regular
2-19 Session, 2005, by an insurance carrier for the provision of durable
2-20 medical equipment or home health care services.

2-21 (b) Notwithstanding any provision of Chapter 1305,
2-22 Insurance Code, or Section 504.053 of this code, durable medical
2-23 equipment and home health care services may be reimbursed in
2-24 accordance with the fee guidelines adopted by the commissioner or
2-25 at a voluntarily negotiated contract rate in accordance with this
2-26 section.

2-27 (c) Notwithstanding any other provision of this title or any
2-28 provision of Chapter 1305, Insurance Code, an insurance carrier may
2-29 pay a health care provider fees for durable medical equipment or
2-30 home health care services that are inconsistent with the fee
2-31 guidelines adopted by the commissioner only if the carrier or the
2-32 carrier's authorized agent has a contract with the health care
2-33 provider and that contract includes a specific fee schedule. An
2-34 insurance carrier or the carrier's authorized agent may use an
2-35 informal or voluntary network to obtain a contractual agreement
2-36 that provides for fees different from the fees authorized under the
2-37 fee guidelines adopted by the commissioner for durable medical
2-38 equipment or home health care services. If a carrier or the
2-39 carrier's authorized agent chooses to use an informal or voluntary
2-40 network to obtain a contractual fee arrangement, there must be a
2-41 contractual arrangement between:

2-42 (1) the carrier or authorized agent and the informal
2-43 or voluntary network that authorizes the network to contract with
2-44 health care providers for durable medical equipment or home health
2-45 care services on the carrier's behalf; and

2-46 (2) the informal or voluntary network and the health
2-47 care provider that includes a specific fee schedule and complies
2-48 with the notice requirements of this section.

2-49 (d) An informal or voluntary network, or the carrier or the
2-50 carrier's authorized agent shall, at least quarterly, notify each
2-51 health care provider of any person, other than an injured employee,
2-52 to which the network's contractual fee arrangements with the health
2-53 care provider are sold, leased, transferred, or conveyed. Notice
2-54 to each health care provider:

2-55 (1) must include:

2-56 (A) the contact information for the network,
2-57 including the name, physical address, and toll-free telephone
2-58 number at which a health care provider with which the network has a
2-59 contract may contact the network; and

2-60 (B) in the body of the notice:

2-61 (i) the name, physical address, and
2-62 telephone number of any person, other than an injured employee, to
2-63 which the network's contractual fee arrangement with the health
2-64 care provider is sold, leased, transferred, or conveyed; and

2-65 (ii) the start date and any end date of the
2-66 period during which the network's contractual fee arrangement with
2-67 the health care provider is sold, leased, transferred, or conveyed;
2-68 and

2-69 (2) may be provided:

3-1 (A) in an electronic format, if a paper version
3-2 is available on request by the division; and
3-3 (B) through an Internet website link, but only if
3-4 the website:
3-5 (i) contains the information described by
3-6 Subdivision (1); and
3-7 (ii) is updated at least monthly with
3-8 current and correct information.
3-9 (e) An informal or voluntary network, or the carrier or the
3-10 carrier's authorized agent, as appropriate, shall document the
3-11 delivery of the notice required under Subsection (d), including the
3-12 method of delivery, to whom the notice was delivered, and the date
3-13 of delivery. For purposes of Subsection (d), a notice is considered
3-14 to be delivered on, as applicable:
3-15 (1) the fifth day after the date the notice is mailed
3-16 via United States Postal Service; or
3-17 (2) the date the notice is faxed or electronically
3-18 delivered.
3-19 (f) An insurance carrier, or the carrier's authorized agent
3-20 or an informal or voluntary network at the carrier's request, shall
3-21 provide copies of each contract described by Subsection (c) to the
3-22 division on the request of the division. Information included in a
3-23 contract under Subsection (c) is confidential and is not subject to
3-24 disclosure under Chapter 552, Government Code. Notwithstanding
3-25 Subsection (c), the insurance carrier may be required to pay fees in
3-26 accordance with the division's fee guidelines if:
3-27 (1) the contract:
3-28 (A) is not provided to the division on the
3-29 division's request;
3-30 (B) does not include a specific fee schedule
3-31 consistent with Subsection (c); or
3-32 (C) does not clearly state that the contractual
3-33 fee arrangement is between the health care provider and the named
3-34 insurance carrier or the carrier's authorized agent; or
3-35 (2) the carrier or the carrier's authorized agent does
3-36 not comply with the notice requirements under Subsection (d).
3-37 (g) Failure to provide documentation described by
3-38 Subsection (e) to the division on the request of the division or
3-39 failure to provide notice as required under Subsection (d) creates
3-40 a rebuttable presumption in an enforcement action under this
3-41 subtitle and in a medical fee dispute under Chapter 413 that a
3-42 health care provider did not receive the notice.
3-43 (h) An insurance carrier or the carrier's authorized agent
3-44 commits an administrative violation if the carrier or agent
3-45 violates any provision of this section. Any administrative penalty
3-46 assessed under this subsection shall be assessed against the
3-47 carrier, regardless of whether the carrier or agent committed the
3-48 violation.
3-49 (i) Notwithstanding Section 1305.003(b), Insurance Code, in
3-50 the event of a conflict between this section and Section 413.016 or
3-51 any other provision of Chapter 413 of this code or Chapter 1305,
3-52 Insurance Code, this section prevails.
3-53 SECTION 4. Each informal or voluntary network described by
3-54 Section 408.0284, Labor Code, as added by this Act, that has a
3-55 contract between an insurance carrier or an insurance carrier's
3-56 authorized agent and a health care provider that is in effect on the
3-57 effective date of this Act shall file the report described by
3-58 Subsection (a), Section 408.0282, Labor Code, as amended by this
3-59 Act, not later than the 30th day after the effective date of this
3-60 Act.
3-61 SECTION 5. With respect to a contractual agreement that
3-62 provides for fees for durable medical equipment or home health care
3-63 services that are different from the fees authorized under the fee
3-64 guidelines adopted by the commissioner of workers' compensation
3-65 under Title 5, Labor Code, and that is entered into after the
3-66 effective date of this Act, the notice required under Subsection
3-67 (d), Section 408.0284, Labor Code, as added by this Act, shall be
3-68 sent not later than the 30th day after the effective date of the
3-69 contract, and subsequent notices required under that section shall

4-1 be sent on a quarterly basis.

4-2 SECTION 6. If any provision of this Act or its application
4-3 to any person or circumstance is held invalid, the invalidity does
4-4 not affect other provisions or applications of this Act that can be
4-5 given effect without the invalid provision or application, and to
4-6 this end the provisions of this Act are severable.

4-7 SECTION 7. This Act takes effect September 1, 2013.

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